

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Crl.L.P..No. 390 of 2007()

ST.1169/2004 of J.M.F.C., DEVICOLAM

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PETITIONER/COMPLAINANT

SOLAISWAMY, S/O GURUSWAMY,
VAGAVARARI ESTRATEE, THALAYAR P.O.,
K.D.H.VILLAGE.

BY ADV. SRI.C.K.VIDYASAGAR
SRI.P.CHANDY JOSEPH

RESPONDENTS: ACCUSED

1. SIJU PULLAN, S/O GEORGE,
PULLAN HOUSE, ADIMALI KARA, MANNAMKANDOM P.O.,
DEVIKULAM TALUK.
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI.C.M.KAMMAPPU

THIS CRIMINAL LEAVE PETITION HAVE COME UP FOR ADMISSION ON
25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.390 OF 2007

Dated this the 25th day of June, 2007.

JUDGMENT

This is an application for special leave to appeal against the judgment in S.T.No.1169/2004 on the file of the Judicial Magistrate of First Class, Devikulam. As per the complaint filed by the petitioner/complainant, the 1st respondent had issued a cheque for Rs.1,40,000/= towards discharge of a legally enforceable debt. But when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. On complying the statutory provisions regarding notice etc., the complaint has been filed on seeing that the amount covered by the cheque has not been repaid.

2. To prove the case against the 1st respondent, the petitioner/complainant himself was examined as PW1 and also relied on Exts.P1 to P6. After closing the evidence adduced for and on behalf of the petitioner/complainant, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations in the complaint, the 1st respondent had

stated that there was no transaction between the petitioner and the 1st respondent as alleged in the complaint, at the same time, the 1st respondent had stated before the court that he had purchased a Mahendra Jeep on the basis of an agreement entered upon by the petitioner/complainant and himself. As per the terms and conditions in the agreement, payment of the sale price shall be in instalments and since some of the instalments became due, the vehicle was re-possessed by the petitioner/complainant and thereafter a blank cheque given by the 1st respondent at the time of accepting the vehicle and on the basis of the terms and conditions in the agreement, the same was misused by the petitioner by filing a complaint against the 1st respondent. The further case of the 1st respondent with regard to the question of re-payment of the sale price was that a complaint has been filed before the Munnar Police Station and the entire matter has been settled at the police station itself and in spite of settling of the matter before the police station, the petitioner/complainant filed the complaint by using the cheque given by the 1st respondent. To prove this case, two witnesses were examined as DW1 and DW2 and also relied on Exts.D1 and D2. After considering the entire evidence adduced before the court below, the

trial court found that the complainant/petitioner failed to prove the case against the 1st respondent. Hence, the 1st respondent was acquitted and the trial court also ordered a compensation of Rs.3,000/= under Section 250 of the Code of Criminal Procedure to the 1st respondent. Against that judgment, this petition is filed for special leave to appeal.

3. This Court heard the learned counsel appearing for the petitioner/complainant and perused the records made available to this Court. The specific case set up by the petitioner/complainant before the court is that the 1st respondent had issued the cheque in question in discharge of an amount of Rs.1,40,000/= and as the cheque was dishonoured, the case was filed. But the petitioner/complainant could not prove the exact transaction which led to issuance of the cheque in question. The 1st respondent had a case before the court that he had purchased the Mahendra Jeep bearing Registration No.KL-6A/3715 at a ready cash of Rs. One lakh and at the time of the payment, there was an agreement between the petitioner/complainant and the 1st respondent and as the complainant was not satisfied with the payment, the 1st respondent had filed the complaint before the court using the

cheque given by the 1st respondent as security at the time of purchase of the vehicle. To come to this conclusion, the trial court also relied on the evidence of Dws 1 and 2 that the complaint filed before the Munnar Police Station has been settled at the police station itself. The trial court also found that the complainant had not proved the real issuance of the cheque in question by the 1st respondent.

4. Considering the entire evidence once again, this Court is of the view that the findings entered by the trial court require no interference. However, the compensation allowed by the court below in favour of the 1st respondent is hereby vacated confirming all other findings entered by the trial court. In the nature of the transaction and evidence adduced by the parties, the compensation ordered by the court below is not justifiable

Leave to appeal stands dismissed with the above modifications.

K. THANKAPPAN, JUDGE.

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